

AG-USE APPRAISAL

POLICY

It is the policy of Hidalgo County Appraisal District to appraise all property that qualifies for 1-D and 1-d-1 appraisal by using the cash lease method of appraisal.

CASH LEASE METHOD

A cash lease (cash rent) is an agreement between land owner and tenant to lease for a fixed cash payment. This payment is usually in terms of dollars per acre for a period of one year. When the landowner leases on a cash basis, he ordinarily has no labor or operating capital costs. If the landowner has no expenses relating to the agricultural use of the land, the cash lease payment is virtually equivalent to a return to the land. If the prudent owner typically does pay some expenses, appraisers should deduct them from the lease payment to determine net to land.

TERMS OF LEASE

The cash lease used for a specific land class should represent the payment to a prudent property owner. In some cases, the most common or typical agreement within an area may not be prudent for either the property owner or tenant. This situation may occur when the most common lease agreements are between family members.

The property owner's expenses typically include certain fixed costs such as property taxes, depreciation on irrigation equipment if the property owner also owns the equipment, depreciation of fences and typical structural improvements, and water depletion. Appraisers should calculate property taxes on the basis of agricultural use appraisal rather than market appraisal.

ADDITIONAL COSTS

The property owner also incurs a cost of management, covering such activities as finding a tenant, keeping records, and making sure that the tenant meets the contract agreement. In many cases the cost of management is insignificant when calculated on a per acre basis.

Although the "typical" cash lease landlord has few or no expenses, some leases may require him to pay additional expenses. Appraisers should adjust these leases to typical terms before using them to estimate typical net lease payments.

In summary, the net land to value is the typical cash lease rate minus the typical expenses incurred by the landowner. Appendix E, Figure 1 provides a hypothetical example of the cash lease method.

STEPS IN A TYPICAL CASH METHOD

1. gather cash lease rates from knowledgeable persons in the area. This data is not always readily available. Do not use leases of an unusual nature, long term leases with options to buy, or leases between family members. Leases of this type are not considered normal arm's-length transactions and may not indicate the actual income producing capacity of the soil.

2. Gather as many leases as possible for each year for the five-year period. In most cases, you will need at least four to six leases per year to develop a reliable net to land value for a specific land class. Typical leases will usually fall within a narrow dollar range. You must choose one value to serve as a typical lease rate for the year.

For example, assume you discover four grazing leases and four hunting leases for native pastureland. The payments are \$4.50 per acre, \$4.75 per acre, \$4.75 per acre and \$5.00 per acre for each year, respectively. The four hunting lease rates are \$3.50 per acre, \$3.50 per acre, \$3.50 per acre and \$3.25 per acre hunting lease.

You should not assume that the typical lease rate is an average of the lease rates collected. The typical lease rate is the most common or most likely lease rate. In the previous example, \$8.25 per acre would appear to be typical. This lease rate is based on a \$4.75 per acre grazing lease and a \$3.50 per acre hunting lease.

Use the same procedure to establish a typical lease rate for each of the remaining four years of the five-year qualifying period.

If a lease provides for an unusual owner expense—such as maintaining fences—adjust the payment by subtracting that expense. Suppose, for example, that fence maintenance in one lease costs the owner 40 cents per acre, per year. The nominal lease payment is \$4.75 per acre. After adjustment, the payment is \$4.35 per acre.

Lease rates for grazing land are often a function of livestock carrying capacity. Appraisers measure livestock carrying capacity by the number of acres required to carry or support one animal unit. An animal unit is standard for comparing different types of livestock that equals 1,000 pounds of live weight. A cow and its calf constitute one animal unit, as do six sheep or seven goats. When carrying capacity varies in the jurisdiction because of soils, topography, or other factors, sub-classes under the native pasture class should reflect the differences.

3. Determine typical landowner expenses. In the example above, assume that the landowner has a "cost" of 50 cents per acre per year for depreciation of fences, and 47 to 52 cents per acre per year for property taxes (based on agricultural appraisal).

Calculate the depreciation cost of fences by dividing the cost of fences on a typical operation by their life expectancy, then by dividing the typical number of acres. Half of the cost of property line fences is attributed to the typical parcel; the other half of the cost is attributed to the land across the fence.

Again, the appraiser should determine typical expenses according to actual practice in the area. Isolated unusual expenses in a single lease (like fence maintenance) are handled by adjusting the individual lease. However, if fence maintenance appears to be a typical expense, do not adjust the individual lease rates. Instead, include the fence expense as typical and subtract it from the typical lease rate.

4. For each of the five base years, subtract the expenses from the typical lease rate. The remainder is the net to land value. Average the five net to

land values for each of the five years to obtain the overall net to land value for the land class for the five-year period. Divide this net to land value by the capitalization rate to obtain the agricultural use value for the class.

Sound net to land values for one sub-class can often be adjusted to fit other sub-classes. For example, land with a carrying capacity of one animal unit per 20 acres can support twice as many animals as land with a carrying capacity of one animal unit per 40 acres. If the annual payment is \$3.00 per acre for the better land, one would reasonably expect the annual payment to be \$1.50, or half as much, for land that can support half the animals.

In many areas agricultural land is also leased for hunting and other recreational purposes. The calculation of net to land should include income from hunting leases in areas where native pasture and timberland are commer-

cially leased for deer hunting or where a prudent manager would supplement his agricultural income with hunting lease income (e.g. where native pasture is also leased for hunting).

Like other lease income, hunting income should not be net income. You should deduct typical owner's expenses from total income. However, items like property taxes and depreciation, or any expense attributable to both leases, should only be deducted once. Do not subtract them from both hunting and agricultural income.

AGRICULTURE-USE

POLICY

No property owner shall be denied the opportunity to apply for any piece of property which he or she feel that might qualify for productivity value. If an application is denied, the applicant will be notified in writing within five days, the reasons for denial and procedures for protesting before the Appraisal Review Board will be explained. In order for a piece of property to qualify for productivity value, it must first be applied for by owner and a valid application must be on file. All applications will be timely filed as outlined by the Property Tax Code in order to qualify.

Procedure

- A. Two amendments to the Texas Constitution permit agricultural and open-space land to be taxed generally at its productivity value instead of market value. These provisions are effective only if applications are filed with the appraisal district office in a timely manner.
1. Provision Article 8, Section 1-d of the Texas Constitution permits a productivity value of land provided certain qualifications are met. Which are:
 - a.) The land must be owned by a natural person-partnership, corporations or organizations may not qualify.
 - b.) The land must have been in agricultural use for three years prior to claiming this kind of valuation.
 - c.) The owner must apply for this designation each year and file a sworn Statement about the use of the land.
 - d.) The agricultural business must be the land owner's primary occupation and primary source of income.Applications for appraisal under this provision must be filed annually with the Chief Appraiser before May 1.
 2. Provision Article 8, Section 1-d-1 of the Texas Constitution allows open-space valuation of land. "Open-Space land" includes agricultural land and timberland. Qualifications for designation under this law are made less strict. Most farmers or ranchers who are unable to qualify for agricultural-use valuation will qualify for open-space land valuation. Under this provision, the following qualifications must be met:
 - a.) For agricultural land, the land must be currently devoted principally to agricultural use to the degree of intensity generally accepted in the area.

- b.) The land must have been in agricultural use for at least five of the last seven years.
- c.) A valid application should be filed during the rendition period on a form provided by the Chief Appraiser.
- d.) Under open-space land valuation, there is no requirement that the land be owned by a natural person.
- e.) The agricultural business need not be the primary occupation or source of income of the owner.
- f.) Once your application for open-space valuation has been approved by the Chief Appraiser you do not need to reapply annually.

- B. Applications will be mailed annually to all natural persons who qualified for agricultural-use valuation, under Article 8, Section 1-d, the year before. Mailing be done during the month of January or as soon there after. Applications will be mailed to all new owners of property who wish to receive one during the rendition period. Applications will also be available in our office for people who wish to come in and apply in person.
- C. All applications should be filled out completely other wise it will be disapproved and possibly denied.

Information that is required on each application is as follows:

1. Name and address of applicant
2. Telephone number, if available
3. Primary occupation of applicant
4. Acreage by category for each parcel
5. Legal description of property
6. Principal use of land for past 7 years
7. Current use of land
8. Is property within corporate city limits?
9. It property owned by a non-resident alien, corporation, partnership or trust?
10. Signature and date
11. Agriculture -Use or Open-Space Land

- D. All applications will be checked carefully and if possible field inspected for their validity.
1. If an application is found to be incomplete it will not be approved until property owner completes it. If the application is not completed before the appraisal records are certified it will be denied for that year.
 2. If an application does not qualify for one or more of the following reasons it will be denied and property owner will be notified in writing and given procedures for appealing to the Appraisal Reveiw Board.
Reasons for denial:
 - a.) Primary use of the land is not for agricultural purposes.
 - b.) The land is not used to the degree of intensity to qualify under the law.
 - c.) The land is ineligible by reason of non-resident alien ownership.
- E. The valuation for both agriculture-use and open-space land will be the same if it is the same category. Valuation will be determined by using owner-operate budgets or cash leases to determine the net-to-land per acre by categories.
- F. The agricultural and open-space land values are determined by dividing the yearly income per acre of each of the categories by the capitalization rate for productivity valuation, which is supplied to us yearly by the State Property Tax Board.

Rollback

Persons who receive special land valuation must be aware that a possibility exists that additional taxes will become due in the future. This additional tax, or rollback, is measured by the difference between the taxes paid and the taxes which would have been paid had the land been valued at market value. This recapture of lost taxes extends back three years on land designated for agricultural use under Article 8, Section 1-d. For land receiving open-space designation under Article 8, Section 1-d-1, the recapture extends back for five years. The additional tax is imposed under Article 8, Section 1-d, if the land is sold or if the land is changed to a use other than an agricultural use. For land under Article 8, Section 1-d-1, the additional tax is imposed only if the use of the land charges.

Qualification of Land as Open-Space Agricultural Land

Land does not qualify for a productivity appraisal just because it is rural or has some connection with agriculture or because it is open land that has no other possible use. The Property Tax Code establishes several requirements for qualifying land as open-space agricultural land:

1. The special agricultural appraisal applies to the "land" and not to other property that may be connected with the land.

The whole intent behind the special valuation laws is to reduce the property tax burden on farm and ranch land. Restricting the tax benefits to land only (essentially the soil that is under production) mean that special valuation does not apply to other property or property rights that may be owned in conjunction with the land. For example:

- o improvements such as barns, sheds, silos and other farm outbuildings are appraised for tax purposes separately at their market value;
- o land beneath the buildings still qualifies for the special valuation because it is used in connection with the agricultural operation;
- o minerals--oil, gas, or any hard mineral--are appraised separately at market value;
- o the actual products of the agricultural operation, the steers, grain, peaches, flowers, peanuts, rice, cotton, etc., are appraised and taxed separately at market value (note, though, that farm products in the hands of the producer are exempt from taxation because of other provisions of Texas law).

2. A Property Owner Must File a Valid Application Form. To be valid, the application must be on a form provided by the appraisal district and adopted by the State Property Tax Board.

The application must contain all information that is necessary for the chief appraiser to determine whether land qualifies as open-space land. Remember that the productivity appraisal is like a tax exemption because it treats a property owner differently than all other taxpayers. In deciding whether property qualifies for an exemption as a school, a church, or a charitable organization, for example, the chief appraiser must determine if a property clearly meets all tests set out in the exemption law. Any questions or concerns about whether the property is entitled to an exemption are resolved against granting the exemption.

A chief appraiser must review applications for special productivity appraisal in the same manner. Any doubts about whether land qualifies as open-space agricultural land are resolved against the property. The application process is really the only way a chief appraiser can gather all the information that is necessary to decide if land does qualify under the law. The application form, then, must contain every piece of information that supports a property owner's claim that his land is eligible for an agricultural appraisal.

A property owner may file a single application form covering all tracts that he is attempting to qualify as open-space land. He does not have to file a separate form for each tract--so long as the form provides sufficient information for the chief appraiser to decide if the land qualifies under the law.

The need to file a single form is most obvious in the situation where a person is farming or ranching several contiguous tracts. The chief appraiser must view the use of the entire agricultural operation as a unit--not with respect to the activities on each individual parcel. The single application form would notify the appraisal district of the unity of operation.

There are other issues about the applications process:

- o Filing deadline: The application form must be filed before May 1.

For good cause, the chief appraiser may extend the filing deadline for not more than 60 days. An extension should be granted in writing, and must be requested before the May 1 deadline.

- o Late applications: A late application may be filed until the appraisal review board approves records for that year (usually about July 20).

However, an application filed after May 1 is subject to a penalty equal to 10 percent of the difference between the tax if imposed at market value and the tax that would be due if imposed at the agricultural productivity value. An application filed after May 1 because the chief appraiser extended the deadline for that property owner does not incur this additional penalty.

The chief appraiser must enter this penalty in the appraisal records and send written notice of the penalty to the property owner explaining the reason for the penalty.

A lien for the amount of the penalty attaches to the property until the penalty is paid. Penalty and interest accrue as if it were a delinquent tax--that is, if the penalty remains unpaid after February 1 of the following year.

- o Failure to file form: If a person fails to file a valid application on time, the land is ineligible for an agricultural appraisal in that tax year.
- o One-time application: Once the application is filed and an agricultural appraisal is approved, the land may receive open-space appraisal every year without a new application unless the ownership changes or the land's eligibility changes.

The chief appraiser may require a landowner to file a new application if there is reason to believe the land is no longer qualified for special valuation.

- o Notification of changes: A property owner must notify the appraisal office in writing before May 1 whenever ownership, eligibility, or the type of agricultural use on the land changes.

If ownership has changed but the land continued to receive an agricultural valuation listed under the former owner, then the land has been erroneously granted the special tax benefit. Even if the land could otherwise qualify under the statute (that is, it meets all tests for having an agricultural use) the current owner must file an application for open-space

status in his own name. Where the special valuation is continued because of an owner's failure to inform the appraisal office of the change in ownership, the land must be "back-assessed" at its market value. The chief appraiser calculates the difference between the land's market value and its agricultural value and adds this difference to the appraisal roll as omitted property.

In addition, the land is subject to a penalty for failure to file the notice of changed ownership. The penalty is equal to 10% of the difference between the taxes imposed on the property in each year and the taxes that would have been imposed at market value.

When a penalty is imposed, the chief appraiser must send a notice of the penalty to the property owner and include a brief explanation of the procedures for protesting the penalty. The penalty is noted in the appraisal records, and the assessor adds the penalty to the property's annual tax bill.

This same process occurs if the land's qualification for open-space status changes. For example, if land is held out of agricultural production for longer than normal crop or livestock rotation it is no longer eligible to receive the special agricultural valuation. The same is true if the land's principal use changes from agricultural to recreational, or if the land is annexed into a city and has not been used for agricultural production for five consecutive years. Whenever the land's eligibility changes and the owner fails to notify the appraisal district, the land is back-assessed as omitted property for the difference between its market value and the agricultural value, and is also subject to the additional penalty for failure to file notification of the change.

Finally, the land is subject to the 10 percent penalty (but not a back-assessment) if the owner fails to inform the appraisal office that the category of use has changed. Assume that land is valued as dry cropland for a number of years. The property owner establishes an irrigation system on the land and begins producing a different crop. If he fails to notify the appraisal office that the category has changed, the land will still be valued as dry cropland--at a lower value than would occur if the appraisal office were aware of the irrigation. When the chief appraiser discovers the changed agricultural category, he must note the penalty on the appraisal records, and the tax assessor will add the penalty to the tax bill. In this

case, the penalty amounts to 10 percent of the difference between the tax imposed on the land as dry cropland and the tax that would have been imposed if land is valued as irrigated cropland. There is no additional back-assessment of the difference in value.

- o Chief appraiser's action: The chief appraiser must review each application and decide whether to:
 1. approve it and designate the land as open-space;
 2. disapprove the application and request additional information; or
 3. deny the application.
- o Qualification deadline: The chief appraiser must determine the validity of all applications before May 15th of each year.

At that time, he turns all appraisal records over to the district's appraisal review board. The board spends about two months reviewing all appraisal records, including a review to make sure that all applications for special valuation have been correctly granted. Property owners that were denied open-space valuation may file a protest with this board. Taxing units that believe special valuation was granted to any property owner erroneously may seek to remove that grant by filing a challenge with the review board.

- o When an application is denied: If a chief appraiser has denied an application, he is required to deliver a notice of the denial to the applicant within five days of the denial. The notice must contain a brief explanation of the procedures for protesting to the appraisal review board.
- o Additional information: If the chief appraiser requests additional information, it must be filed within 30 days after the date of the request or an application will be denied.

If there is a good reason, the chief appraiser may extend the deadline to allow additional information. An extension cannot exceed 15 days.

3. Land must be currently devoted principally to agricultural use.

The term "agricultural use" is defined in Sec. 23.51(2) to include the following activities:

- cultivating the soil
- producing crops for human food or animal feed
- planting seed for the production of fibers
- floriculture (the cultivation and management of ornamental and flowering plants)
- viticulture (the cultivation of grapes, especially for winemaking)
- horticulture (the cultivation of fruits, vegetables, flowers, herbs or other plants)
- raising or keeping livestock (domesticated animals kept for an agricultural purpose)
- planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

This list is not exhaustive. Agricultural use includes other activities as well. For example, The Texas Supreme Court once defined agriculture as "the science and art of the production of plants and animals useful to man." *Gordon v. Buster*, 257 S.W. 220 (Tex. 1923). Based on that broad definition, the Texas Attorney General ruled that agriculture includes the term "mariculture" and that the use of land to produce fish and other forms of aquatic life could qualify for an agricultural appraisal. Op. Tex. Att'y Gen. No. JM-87 (1983).

According to the statute, land must also be devoted principally to an agricultural use. The term "principally" means the most important or leading use. Other uses do not prevent land from qualifying as open-space land so long as the principal use is for agriculture.

Use of the land for hunting, recreation, or raising horses, for example, could be incidental (secondary) uses. Leasing land for deer hunting is still compatible with a primary use of land for grazing cattle. If one of these other uses becomes the primary use of land, at the expense of a qualifying agricultural use, then land is no longer principally devoted to agricultural use and cannot qualify for agricultural valuation.

The use of land to raise horses or exotic game animals does not qualify as an agricultural use. Those activities are recreational uses. While raising any animal is--in a generic sense--keeping livestock, land qualifies for a special agricultural value only if the livestock also has a farm or ranch purpose.

Thus, if land has a secondary use for agriculture but a primary use for raising deer or exotic game animals, it would not be used principally for agriculture (The statute does require that income received from hunting or recreational leases be included in calculating net-to-land.

The same analysis applies to the raising of fish or fish products. There is a difference between commercial fish production and keeping game fish for purely sporting or recreational purposes. It is not necessarily related to the scale of the operation. Nor is it related to any intent to produce income or make a profit. Raising fish is an qualified agricultural land use when all elements of bulk harvest are present. Taking fish by individual line is clearly a recreational activity.

Finally, the land must be "currently devoted" to the agricultural use. This test looks at the time in which land has the agricultural use. It is a check to make sure that, taken as a whole, the agricultural use exists in the year for which the land receives the agricultural appraisal.

It does not require that the land be used for a qualifying purpose on January 1 and no other date. It does not mean that land that is taken out of agricultural production after May 1 cannot necessarily qualify in that year. It only means that--all factors considered--the land is agricultural this year.

4. Land must be devoted to an agricultural use to the degree of intensity that is typical in an area.

The previous section described whether a particular use was "agricultural." However, to receive a productivity appraisal, the land must be used for an agricultural purpose to the degree of intensity typical in the area. This requirement assures that only bona fide agricultural land will receive the special tax benefits. It specifically excludes land on which token agricultural use occurs in an effort to obtain eligibility or where the agricultural use is simply a hobby.

The "degree of intensity" concept is intended to be more fully defined by each chief appraiser to reflect local agricultural practices. Because of the variety of soil types and climatic

conditions in a state as large as Texas, no single statutory definition could cover all possible uses.

The "degree of intensity" test measures the inputs to agricultural production. In economic terms, production is a function of mixing land, labor, management and capital. In agricultural terms, production is a series of activities--farm agriculture requires clearing land, tilling, planting, fertilizing, irrigating, and harvesting. Deciding whether a property is being used for an agricultural purpose to the degree of intensity typical in an area is a matter of reviewing both the economic and agricultural inputs.

For each commodity being produced within the appraisal district, the chief appraiser should list the common steps of production. Farming dryland cotton requires tilling soil, planting, applying herbicides and fertilizers, and stripping the bolls at harvest. Raising beef cattle requires fencing (except in open range areas), proper management of land for long-run forage, enough animal units to roughly approximate the land's carrying capacity, and a herd management procedure to harvest the animals for market.

To meet the degree of intensity test, each property owner should be able to prove that each necessary input to agricultural production is a part of the agricultural use of his land. The unexplained absence of any necessary step is evidence that land is not being used to the necessary degree of intensity.

The chief appraiser's decision on what constitutes an "area" will define what agricultural practices are typical. Generally speaking, the area of special focus will vary with the commodity under review. For a common crop such as dryland cotton, the chief appraiser may be able to look to farming practices within the county. Producing a commodity that is relatively rare for the county may mean that the chief appraiser will look to a multi-county region to decide the typical agricultural inputs.

5. The land must have been used principally for an agricultural use for any five of the preceding seven years.

This requirement is self-explanatory. The application form must provide information that allows the chief appraiser to determine the land's use during the preceding seven years. Any five of these seven will support qualifying land for an agricultural appraisal.

6. Land that is located within the boundaries of a city or town needs a closer look.

Not all agricultural land is eligible for open-space appraisal, even if it otherwise meets all the requirements of the law. Some land within the boundaries of a city may not qualify.

- o Land that otherwise qualifies for an agricultural valuation is disqualified if it is located within an incorporated city or town unless the city does not provide the land with general services comparable to those provided in other parts of the municipality having similar features and population.

However, city land does qualify as open-space land regardless of the level of services if the land has been devoted principally to agricultural use continuously for the preceding 5 years.

Agricultural Valuation under Section 1-d

Texas has two different laws that permit a special agricultural appraisal.

Land qualifies under Article VIII, Section 1-d of the Texas Constitution if it is being used for an agricultural use under the law. Land qualifies under Article VIII, Section 1-d-1 of the Texas Constitution if it is being used as qualified open-space land under the law.

Much of the agricultural land in Texas could qualify for an agricultural valuation under either law. And, virtually all the land that receives a special value in Texas today is qualified under Section 1-d-1.

This guideline summarizes the application, qualification, and valuation procedures under Section 1-d. To receive 1-d valuation the farm or ranch must meet the following requirements:

- o On January 1 the land must be exclusively devoted or continuously developed for agricultural use for three years before the current year.
- o Agricultural land is land that is used to produce plant or animal products under natural conditions. It does not include land used to process agricultural products after harvest. It doesn't include the production of timber or forest products.
- o The landowner must use and intend to use land as an agricultural occupation or business venture for profit during the current year.
- o The land must be owned by an individual--land does not qualify under 1-d if it is owned by a corporation, partnership or association.
- o Agriculture must be the landowner's primary occupation and source of income. Agriculture is a primary occupation if as of January 1 the landowner spends more time and receives more gross income from agriculture than from any other occupation.

To determine a person's primary occupation and source of income, average the time spent and gross income earned from each occupation for no more than five consecutive years immediately before January 1 of the current year. However, if the owner has not been in agriculture as an occupation for the entire year before January 1, the time devoted and income received from each occupation since beginning the agricultural occupation determines whether agriculture is a primary occupation and source of income.

- o Land may receive 1-d valuation if it is used for a nonagricultural purpose and that use is secondary to and compatible with the agricultural use of the land.

Application procedures

1. To receive a special appraisal, a property owner must file an application for agricultural designation.
2. An application must be filed each year.
3. The application must be filed with the chief appraiser in the appraisal district where the land is located. Farmers or ranchers whose land is appraised by more than one appraisal district must file an application in each district.
4. The application must be filed before May 1.

In individual cases, and only if there is a good reason, the chief appraiser may extend the May 1 deadline by a single period not to exceed 60 days. An extension must be given in writing and prior to May 1 of each year.

A late application may be filed until the appraisal review board approves records for that year (usually about July 20). However, an application filed after May 1 is subject to a penalty equal to 10 percent of the difference between the tax if imposed at market value and the tax that would be due if imposed at the agricultural productivity value.

Land is not eligible for special appraisal if an application for agricultural use designation is not filed on time.

Late applications

An application may be filed after May 1 and still permit special appraisal for that year if it is filed before the appraisal review board approves records (usually about July 20).

1. If a late application is approved, the property owner must pay a penalty of 10% of the difference between the amount of tax imposed on the property and the amount that would have been imposed without the agricultural designation.
2. The chief appraiser must enter this penalty in the appraisal records and send written notice of the penalty to the property owner explaining the reason for the penalty.
3. The tax assessor of the appropriate taxing unit(s) will add the penalty amount into the tax bill and collect the penalty along with the annual tax payment.
4. A lien for the amount of the penalty attaches to the property until the penalty is paid. Penalty and interest accrue as if it were a delinquent tax--that is, if the penalty remains unpaid after February 1 of the following year.

The chief appraiser is required to:

1. Before February 1 of each year, send a 1-d application form to every owner whose land was designated for agricultural use during the preceding year.
2. Briefly explain how to qualify for agricultural designation.
3. Publicize the application process and availability of forms to all district residents. The public notices must be done in a manner that is reasonably designed to come to the attention of all residents in the district.

A person who has received agricultural-use valuation in the prior year only needs to report that all previously filed information is unchanged. The use of the forms is not mandatory, but the information they require is mandatory.

The chief appraiser must review each application and decide whether to:

1. approve and designate the land as agricultural use;
2. disapprove the application and request additional information; or
3. deny the application.

The chief appraiser must determine the validity of all applications before May 15th of each year. At that time, he turns all appraisal records over to the district's appraisal review board. The board spends about two months reviewing all appraisal records, including a review to make sure that all applications for special valuation have been correctly granted. Property owners that were denied agricultural use valuation may file a protest with this board. Taxing units that believe special valuation was granted to any property owner erroneously may seek to remove that grant by filing a challenge with the review board.

If a chief appraiser has denied an application, he is required to deliver a notice of the denial to the applicant within five days of the denial. The notice must contain a brief explanation of the procedures for protesting to the appraisal review board.

When the chief appraiser requests additional information

- o If the chief appraiser requests additional information, it must be filed within 30 days after the date of the request or an application will be denied.
- o If there is a good reason, the chief appraiser may extend the deadline to allow additional information. An extension cannot exceed 15 days.

Confidentiality of applications.

Qualifying for agricultural valuation under Section 1-d involves providing a great deal of personal information about the land owner that is not required of a person applying under Section 1-d-1. Therefore, the 1-d application is granted protection from unauthorized disclosure. An application for agricultural use designation is confidential, except:

1. an appraisal office employee who appraises property has access to the information;

2. in a judicial or administrative proceeding following a lawful subpoena;
3. to the person who filed the application or to his representative authorized in writing to receive the information;
4. to the director of the State Property Tax Board and his employees authorized by him in writing to receive the information or to an assessor or a chief appraiser if requested in writing;
5. in a judicial or administrative proceeding relating to property taxation to which the person who filed the application is a party;
6. for statistical purposes if in a form that does not identify specific property or a specific property owner; and
7. to the extent the information is required to be included in a public document or record that the appraisal office is required to prepare or maintain

Persons with legal access to the application or who legally obtains the confidential information commit a class B misdemeanor if they knowingly:

1. allow an unauthorized person to inspect the information or
2. disclose the confidential information to an unauthorized person

Valuation Procedures for Agricultural Use (1-d) Land

Section 23.41, Property Tax Code, establishes the valuation procedure for agricultural use land. Land is to be appraised based on its capacity to produce agricultural products. Taxable value is determined by "capitalizing the average net income the land would have yielded under prudent management from production of agricultural products during the five years preceding the current year." This statute must be read in conjunction with its constitutional counterpart--Article VIII, Section 1-d. Portions of that section state that agricultural land must be valued upon "consideration of only those factors relative to such agricultural use."

Together, these provisions require an income approach of agricultural land, considering only the income from agricultural

production. On the surface this appears identical to the income approach required in valuing open-space land under Section 1-d-1. However, Section 23.53 of the Property Tax Code, which applies only to the valuation of open-space land, fixes the capitalization rate for the income appraisal. That rate, under today's conditions, far exceeds a market-based rate that would be derived from sales of agricultural land.